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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/051,909	01/17/2002	Timothy G. Helentjaris	BB1163 US CIP	3323

23906 7590 01/26/2004

E I DU PONT DE NEMOURS AND COMPANY
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EXAMINER

ROBINSON, HOPE A

ART UNIT	PAPER NUMBER
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1653

DATE MAILED: 01/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/051,909	Applicant(s) HELENTJARIS, TIMOTHY G.	
	Examiner Hope A. Robinson	Art Unit 1653	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) 11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1, 2 and 6 is/are rejected.
- 7) ☐ Claim(s) 3-5 and 7-10 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Applicant's election without traverse of Group I in is acknowledged.

Claim Disposition

2. Claims 12-19 have been canceled. Claims 1-11 are pending. Claims 1-10 are under examination.

Information Disclosure Statement

3. The information disclosure statement filed on May 2, 2002 fails to comply with the provisions of 37 CFR 1.97, 1.98 and MPEP 609 because the items listed on the information disclosure statement are not provided in the application. It has been placed in the application file, but the information referred to therein has not been considered as to the merits. A line has been drawn through all items on page 2 of the information disclosure statement.

Claim Objection

4. Claims 3-5 and 7-10 are objected to as the claims depend from a rejected based claim.

Basis For NonStatutory Double Patenting

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 1, 2 and 6 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-2 of copending Application No. 10/051,902. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the instant application are directed to an isolated polynucleotide comprising a nucleotide sequence encoding a polypeptide having a sugar transport protein activity wherein the amino acid sequence of the polypeptide and the amino acid sequence of SEQ ID NO:32 or 36 have at least 80% sequence identity or the

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complement of the nucleotide sequence. The copending application is directed to an isolated nucleic acid fragment encoding all or a substantial portion of a sugar transport protein comprising an isolated nucleic acid fragment encoding all or a substantial portion of the amino acid sequence of SEQ ID NO:2, for example, and a nucleic acid fragment that is complementary to the above. The sequence set forth in SEQ ID NO: 2 of the copending application is 86.3% identical to the sequence contained in SEQ ID NO:32 of the instant application encoded by SEQ ID NO: 1 and 31 respectively, (see claim 2 of the copending application and claim 6 of the instant application). Therefore, the disclosure in the copending application makes obvious the claimed invention in the instant application. Although the scope of the claims herein differs, the two sets of claims are directed to similar inventions since the language in the claim is similar. Thus, the instant application claim is an obvious variation of the copending application claim.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion


7. No claims are presently allowable.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hope Robinson whose telephone number is (571) 272-0957. The examiner can normally be reached on Monday-Friday from 9:00 am to 6:30 pm (EST).

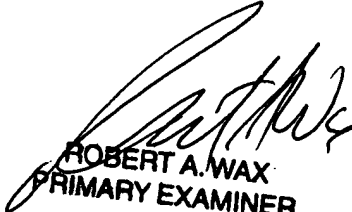
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher S.F. Low, can be reached at (571) 272-0951.

Any inquiries of a general nature relating to this application should be directed to the Group Receptionist whose telephone number is (703) 308-0196.

Papers related to this application may be submitted by facsimile transmission. The official fax phone number for Technology Center 1600 is (703) 308-2742. Please affix the examiner's name on a cover sheet attached to your communication should you choose to fax your response. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG (November 15, 1989).

Hope Robinson, MS 

Patent Examiner


ROBERT A. WAX
PRIMARY EXAMINER